

**Annual Report of the
Fund Insurance Review Board
Submitted to the Joint Standing Committee
on Natural Resources**

February 15, 2000

This report satisfies the requirements of 38 M.S.R.A. Section 570-H, which requires the Fund Insurance Review Board, with cooperation of the Commissioner of the Department of Environmental Protection, to report by February 15 of each year to the Joint Standing Committee on Energy and Natural Resources. The law requires that:

The Fund Insurance Review Board, with cooperation of the Commissioner, shall report to the joint standing committee of the Legislature with jurisdiction over energy and natural resources on the Board and the Department's experience administering the fund, clean up activities, and third party damage claims. The report must also include an assessment of the adequacy of the fund to cover anticipated expenses and any recommendations for statutory change.

This Report represents the Board and the Department's experience in administering the Fund, and is divided into two sections. The first section covers the Board's activities since January 1, 1999 through the period ending December 31, 1999, with the exception of activities related to the Wells Waste Oil Clean-up Fund. The Wells Waste Oil Clean-up Fund Report, **Exhibit D**, highlights the Board and FAME's experience in administering this Fund through December 31, 1999. For information on Exhibits, contact the [RWM Webmaster](#). The second part of this report addresses the specific issues referred to above relating to the adequacy of the Fund.

Mission of the Fund Insurance Review Board:

The Fund Insurance Review Board is established for the purpose of hearing and deciding appeals for claims-related decisions of the Commissioner of the Department of Environmental Protection and the State Fire Marshal's Office pertaining to assistance from the Ground Water Oil Clean-up Fund. The Board monitors the oil income and disbursements from the Ground Water Clean-up Fund.

Part I

The Fund Insurance Review Board fulfills its duties through participation of the following members:

Patricia W. Aho, Esq., Chair

Jamie Py

John Babb, Sr.

Michael Bonzagni *

Donald C. Almy *

Robert Bender, Sr. *

Tina Schneider, Esq., Vice Chair *

Jerry Mansfield *

David Lennett, DEP

Steven Dodge, SFMO

*Appeals panel member

APPEALS ACTIVITIES:

During the calendar year ending December 31, 1999, the Fund Insurance Review Board processed a total of **15** appeals. Of these, the Appeals Panel of the Fund Insurance Review Board heard **nine** appeals. In **two** of those appeals, the Commissioner's/State Fire Marshal's decisions were overturned and the appellant prevailed. In **six** the Commissioner's/State Fire Marshal's decisions were upheld. **Two** appeals were withdrawn. **Three** appeals are waiting to be heard. There is presently **one** appeal on hold while the Appellant and DEP try to work out an agreement. There was **one** appeal that the Appeals Panel heard but for which a final order has not yet been approved. In carrying out its responsibilities, the full Board held **five** business meetings and **four** meetings of the Appeals Panel during which hearings were conducted. **Exhibit A** is a copy of an analysis of 1999 appeals by case. For information on Exhibits, contact the [RWM Webmaster](#).

LEGISLATION AND RULE MAKING:

Public Law 1995, Chapter 399:

In response to several issues raised by the Board and the Department, LD.1563 was passed by the Legislature in June of 1995 (P.L. 1995, Ch. 399). The following is a summary of the major changes resulting from this law:

1. P.L. 1995, Ch. 399 authorized the Board to adopt rules, including emergency rules, to increase oil import fees when the Ground Water Oil Clean-Up Fund balance dropped below \$3,000,000. Increased fees cease when the Fund reaches a minimum sustaining balance of \$5,000,000 for three consecutive months. The legislation was prompted by growing concerns over increased demand on the fund, which dropped capitalization below a safe sustainable level. The Board was concerned that this might inhibit the State's ability to cover future clean-up costs and claims. Specifically, the Fund Insurance Review Board adopted a rule (Chapter 4 Oil Import Fees) which permits an increase in fees within the limits specified in 38 M.R.S.A. §§568-B (2)(D) and 569-A (5)(E). Because a sustaining fund level has been maintained, the reduced fees have been in effect since May 1, 1998.
2. P.L. 1995 Ch. 399 empowered the Fund Insurance Review Board to order an independent audit of the Ground Water Oil Clean-Up Fund. In July 1999, the Board again engaged the accounting services of Schatz Fletcher & Associates to audit the Fund for the fiscal year ending June 30, 1999. **Exhibit B** is a copy of

the final audit. This was the third audit of the Fund. For information on Exhibits, contact the [RWM Webmaster](#).

Public Law 1998, Chapter 613:

As an oil pollution prevention effort, the Legislature enacted “An Act to Reduce Ground Water Contamination from Leaking Oil Storage Tanks” which authorized the spending of up to \$1 million per year for the next two fiscal years from the Ground Water Oil Clean-up Fund for the replacement of heating oil tanks and piping which are at risk of leaking. The Legislation requires the Department of Environmental Protection (Department), to prepare a plan as to how these monies will be utilized and to submit this plan to the Fund Insurance Review Board. The Legislation also requires the Board to submit a report to this Committee on or before January 15, 2000. The report is to include information on the general condition of aboveground oil storage tanks and facilities in Maine, the amount of money disbursed from the Ground Water Oil Clean-up Fund to retrofit, repair or replace tanks or facilities, and a recommendation as to whether the law should be amended to allow further disbursements from the Fund for these purposes.

At the October 1999 meeting of the Fund Insurance Review Board, the Department presented a status report on the activities to date under the Program. The Board authorized the Department to prepare for Board review, the final draft of the Legislative Report due January 15, 2000. This report will be filed separately by the Department by the January deadline.

RECOMMENDATION FOR LEGISLATIVE CHANGE:

An addition to 38 M.R.S.A. § 568-A(2)(A) was recommended to the FIRB this past year by the Appeals Panel and submitted through a Finance Authority of Maine bill. The added language would have clarified the time at which to determine the number of facilities or capacity in gallons owned by the facility owner for purposes of calculating the standard deductible as the time of discovery of the oil discharge. The language also specified that for purposes of determining the number of facilities or capacity in gallons owned by the facility owner, the facility owner includes entities to which the facility is related. The proposed language was initially enacted as part of P.L. 1999 ch. 504, but later in the session it was deleted by an errors and omissions bill, P.L. 1999 ch. 531.

RELATED LAW

Public Law 1999, Chapter 505 created the Wells Waste Oil Clean-up Fund. This law affects the Fund Insurance Review Board in the following areas:

- It authorized the Transfer of \$4,000,000, on the effective date of the law (September 18, 1999) to be transferred from the Underground Oil Storage Replacement Fund to the Wells Waste Oil Clean-up Fund.
- It requires that proceeds from repayment of loans made under the Wells Waste Oil Clean-up Fund from funds transferred from the Underground Oil Storage and Replacement Fund, be applied back to that fund as they are received.
- It requires the Fund Insurance Review Board to consult with the Finance Authority of Maine at such times as are necessary, but no less than annually to review income and disbursements from the Wells Waste Oil Clean-up Fund under Title 10,

section 1023-L. The Board, at such times and in such amounts as it determines necessary and in consultation with the Finance Authority of Maine, shall direct the transfer of funds from the Underground Oil Storage Replacement Fund to the Groundwater Oil Clean-up Fund maintained by the Department.

- It also requires the FIRB to report by February 15 of each year to the Joint Standing Committee of the Legislature having jurisdiction over natural resource matters. This report must include an assessment of the adequacy of the fund to cover anticipated expenses and any recommendations for statutory change. **Exhibit D** was prepared in fulfillment of this requirement. For information on Exhibits, contact the [RWM Webmaster](#).

OTHER BUSINESS:

The Board filed its Legislative Agenda on September 22, 1999. This is contained in

Exhibit C. For information on Exhibits, contact the [RWM Webmaster](#).

PART II

Administration of the Fund

Department of Environmental Protection

A. Introduction.

The Ground Water Oil Clean up Fund ("The Fund") was established to provide for investigation, mitigation and removal of discharges or threats of discharges of oil from aboveground and underground storage facilities, including the restoration of water supplies, and to guarantee the prompt payment of reasonable damage claims resulting from those discharges.

In April of 1990, Maine law was changed to expand the use of the Fund. These changes provided assurance to owners and operators that monies will be available from the Ground Water Oil Clean up Fund to meet state and federal financial responsibility requirements. According to state and federal law, tank owners must demonstrate financial responsibility for taking corrective action and compensating third parties for bodily injury and property damage caused by accidental releases from underground oil storage facilities. Applications for the coverage of eligible clean up costs and third party damages from underground oil storage facilities could be filed on July 1, 1990.

In 1993, further amendments to the law allowed owners and operators of aboveground oil storage facilities to apply for "fund coverage" for oil spills discovered after April 1, 1990.

Beginning in 1990, money was transferred from the Fund to the Finance Authority of Maine (FAME) to assist with the removal of non-conforming oil storage facilities and replacement with conforming facilities designed to prevent oil pollution from endangering public health and the environment. FAME also provides low interest loans to finance the installation of vapor recovery equipment. FAME offers this assistance through its administration of a revolving loan program.

Under state law, transfers from the Fund to FAME for this purpose have ceased because the aggregate sum of \$13,000,000 has been transferred. The final transfer was made in October 1997 and the fee on oil importation was reduced effective November 1, 1997. Previously, an additional \$3,000,000 was transferred to the Maine State Housing Authority (MSHA) for loans to remove and replace oil storage tanks at residential dwellings. Transfers to MSHA were capped by statute at \$3,000,000. MSHA no longer offers loans and the balance of undisbursed funds in the amount of approximately \$1,895,642 was transferred back to the Ground Water Oil Clean up Fund in October, 1998. Also during FY 99, (December 1998) the Fund Insurance Review Board (FIRB) returned unneeded administrative funds in the amount of \$503,000 to the Fund. Also in FY 99, \$46,000 was returned to the Fund because expenditures were journaled to the fund which should have been paid from other accounts.

Fund revenue is derived from registration fees, penalties, oil transfer fees, reimbursements, assessments and other related fees. The maximum balance in the fund is capped by statute at \$12,500,000.

Legislation enacted during the 1995 legislative session (see PL 1995, c. 399) gave the Fund Insurance Review Board (FIRB) authority to temporarily raise oil importation fees needed to avoid a shortfall in the fund. In September of 1995, the FIRB enacted rules and authorized a fee increase. Fee payments throughout state fiscal year 1997 reflect the fee increase. On May 1, 1998, the temporary fee increase was discontinued because the balance in the Fund averaged \$5 million or more for the months of January, February and March 1998. The lower fee has remained in effect through December 31, 1999.

The following sections summarize the Department's experience administering the Fund, including clean-up activities and third party damage claims.

B. Summary of revenues and expenditures.

Table I illustrates financial activity in the Ground Water Oil Clean up Fund for the fiscal year (FY) 1999 (July 1, 1998 – June 30, 1999). Total net income for FY 1999 was \$14,622,925 while expenditures totaled \$14,420,392.

During the fiscal year 1999, there was a net increase in revenue of \$317,317 and an increase in expenditures of \$1,568,162 when compared to the 1998 fiscal year. The 1998 annual report contained an error of \$2,152,911 in the amount of the balance forwarded at the end of FY 98. The actual balance forwarded on July 1, 1998 was \$5,742,897.25 as opposed to the \$3,589,987.29 reported. In FY '99 fee refunds to petroleum distributors for oil not stored in Maine decreased by approximately \$1,608,972. These factors as well as the return of funds from MSHA and the FIRB contribute to an increase in revenue, however increased expenditures off set the gains in revenue.

The available cash balance in the Fund at the end of the fiscal year was \$5,945,430, while the net Fund availability was \$4,095,434. Significantly, revenue for the first six months of FY 00 has declined in comparison to previous years and remediation expenditures continue to increase, thereby decreasing the available cash balance.

TABLE 1

**STATEMENT OF CASH POSITION
GROUNDWATER OIL CLEAN-UP FUND
AT JUNE 30, 1999**

BALANCE FORWARD	\$ 5,742,897.95
INCOME	\$ 16,359,749.86
Minus Fee Refunds	- \$ 1,736,824.84
NET INCOME	\$ 14,622,925.02
EXPENDITURES	
Personal Services	\$ 2,139,692.46
All Other	\$ 10,538,532.29
Capital	\$ 23,491.63
Indirect Cost Transfers	\$ 1,507,440.55
Other Transfers (Excluding FAME)	\$ 211,235.56
FAME Cash Payments (FY 99)	\$ 0
NET EXPENDITURES	\$ 14,420,392.49
CASH BALANCE (6/30/99)	\$ 5,945,430.48
ENCUMBRANCES (6/30/99)	\$ 1,688,241.35
INDIRECT COST OBLIGATION (6/30/99)(untaken)	\$ 161,754.88
NET FUND AVAILABILITY (6/30/99)	\$ 4,095,434.25

NOTES:

INCOME REPRESENTS FEES, INTEREST, FINES, MISC. INCOME.

OTHER TRANSFERS ARE FOR OTHER STATE AGENCIES, INTERNAL TO OTHER ACCT., I.E. BOARD, LOANS

EXPENDITURES INCLUDE ADJUSTMENTS TO BALANCE FORWARD INCOME (CREDIT TO EXPENSES).

CEILING ON GROUNDWATER OIL CLEAN UP FUND IS \$12,500,000.

C. Status of Applications for Coverage of Clean-Up Costs.

Tables 2, 3, and 4 reflect the status of applications for Fund coverage of clean up costs. Applications related to underground oil storage facilities are filed with the Department of Environmental Protection. Applications related to aboveground oil storage facilities are filed with the Office of the Fire Marshal. Tables 2, 3 and 4 provide eligibility and ineligibility statistics.

TABLE 2

Applications to the DEP for coverage of clean-up costs for underground oil storage facilities.

Total Received (July 1, 1990 - Dec. 31, 1999)	539
Total Eligible	
Total Eligible before September 28, 1995	285
Total Eligible September 28, 1995 - December 31, 1999	198
Total Ineligible	56
Total Pending	0

Note: Prior to September 28, 1995, an applicant was found eligible for Fund coverage if the Department determined they were in "substantial compliance" with the applicable facility installation, operation and removal requirements. As a result of statutory changes, effective September 28, 1995, all those meeting the definition of applicant are eligible, and conditional deductibles are assessed based on a review of applicable compliance information. (See 38 M.R.S.A., § 568-A(2)).

From January 1, 1999 through December 31, 1999, the Department received 13 applications for the coverage of clean up costs. One applicant did not meet the applicant eligibility criteria. There are no pending applications. The Department received 44 fewer applications compared to the number of applications received in 1998.

TABLE 3

Applications to Fire Marshal for coverage of clean-up costs for aboveground oil storage facilities.

Total Received (June 16, 1993 - December 31, 1999)	729
Total Eligible	676
Total Ineligible	42
Total Pending	3
Total Void/Withdrawn	7

From January 1, 1999 through December 31, 1999, the Department of Environmental Protection received approximately 100 approved applications for the payment of eligible clean up costs, out of 106 applications received by the Office of State Marshal. During calendar year 1998, the Office of State Marshal reported receiving approximately 172 applications, therefore, 66 fewer applications were received in calendar year 1999 when compared to calendar year 1998.

TABLE 4

Total Applications (sum of Tables 2 and 3)

Total Received	1,263
Total Eligible	1,169
Total Ineligible	98
Total Pending	3
Total Void/Withdrawn	7

D. Administration of Third Party Claims.

The Department of Environmental Protection currently is processing 63 claims for third party damages against the Ground Water Oil Clean up Fund.

During calendar year 1999, the Department completed processing of 40 claims and awarded a total of \$591,803 in cash settlements to third party claimants. These numbers reflect only those cases where a formal claim has been filed. Many potential third party claims are not filed because connections to existing water supplies and installation of treatment systems and individual well replacements are accomplished in conjunction with site clean-up and without filing a formal claim. Claims must be filed however, prior to the award of any cash settlement.

For third party claims which included a cash award over the previous ten (10) years, the average cash settlement is approximately \$18,445. The average cash settlement has changed, from an average of \$5,000 through 1996; \$9,123 through 1997 and \$15,718 through 1998. Cash settlements reflect compensation for personal property, real property and/or medical expenses related to discharges of oil. Remedial costs associated with settling third party claims are calculated separately as clean up costs.

During calendar year 1999, 14 claims were dismissed, withdrawn or settled without a cash award. In 1999, two third party claims resulted in large cash awards. One third party claimant was awarded \$177,000 and another was awarded \$196,000 in damages. The average cash award to third party claimants for calendar year 1999 was \$22,762. In comparison, the average cash award during calendar year 1997 was \$19,695, and in calendar year 1998 it was \$29,550.

E. Compliance with Tank Abandonment Schedule.

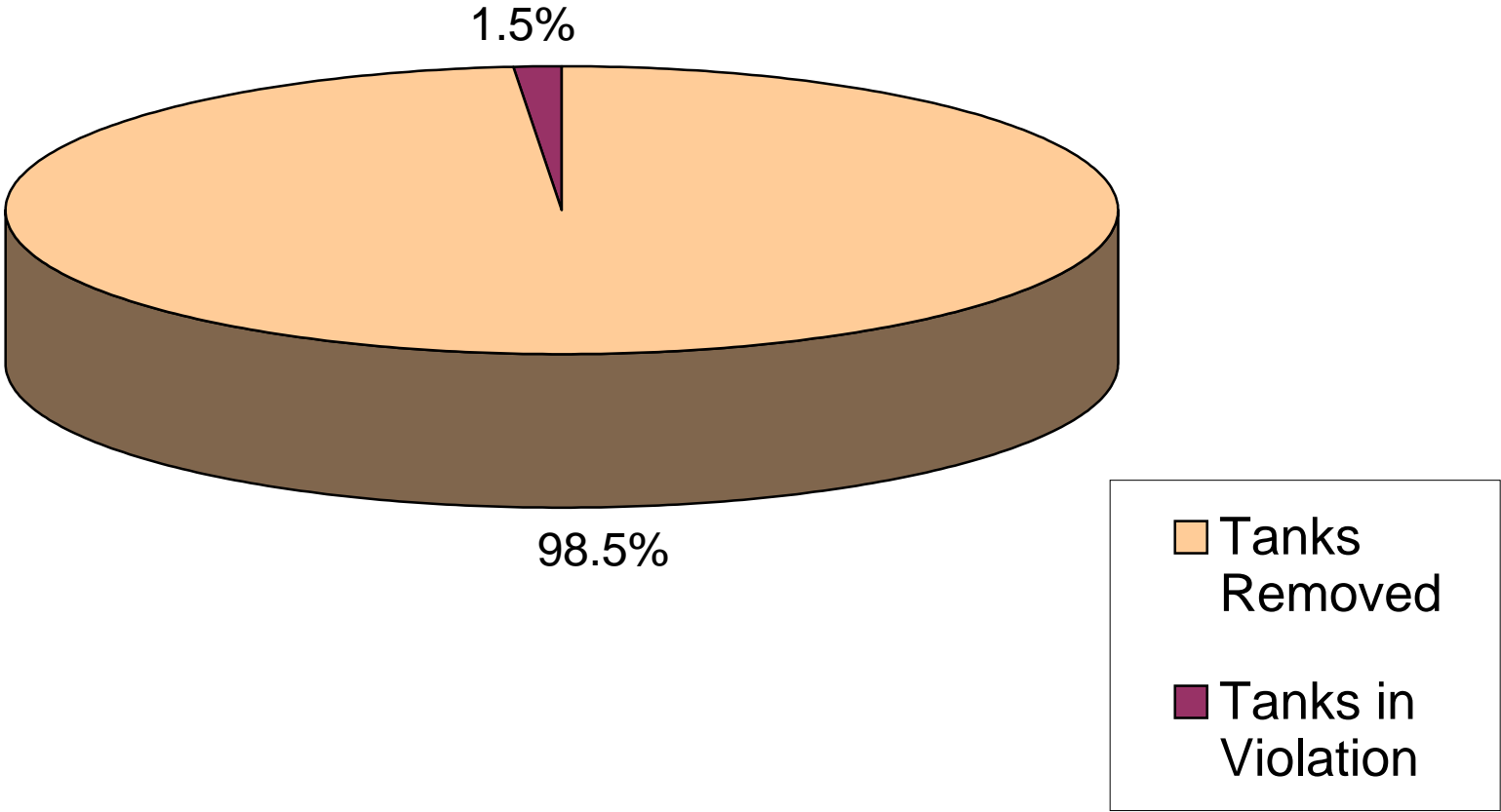
Title 38 M.R.S.A. section 563-A requires all underground oil storage facilities not constructed of fiberglass, cathodically protected steel or other non-corrosive materials approved by the Department to be properly abandoned in accordance with a pre-determined compliance schedule. Non-conforming facilities were subject to proper abandonment by October 1, 1989; 1991; 1994 and 1997 based upon tank age and proximity to drinking water supplies and sand and gravel aquifers. Municipalities and school administrative districts were required to comply with a separate schedule which included a final deadline of October 1, 1998.

The tables on page 7 and 8 illustrate the record of compliance with the removal schedule mandated in statute as of December 31, 1999. All non-conforming facilities should have been removed or otherwise properly abandoned by the final deadline of October 1, 1998. It should be noted that these numbers reflect only those facilities that have been registered with the Department.

Of the 34,576 registered tanks scheduled for removal through October 1, 1998, about 33,999 facilities have been properly removed or abandoned in place. From December 31, 1998 to December 30, 1999 there were 155 additional nonconforming tanks registered. As of December 30, 1999 there were approximately 577 tanks remaining to be properly removed or abandoned in place. Residential locations account for 375 of these non compliant tanks. Approximately 57 of these tanks have been physically removed, however, the owners have failed to have a site assessment performed to determine if clean up actions are necessary.

Currently there are approximately 6,091 conforming and non-conforming underground oil storage tanks registered in the State of Maine. There are an additional 1,165 underground oil storage tanks which have been properly and permanently abandoned in place and 57 tanks which have nearly completed the removal process (site assessments are delinquent). There are 36 tanks which are planned for installation.

Compliance With Bare Steel Tank Removal



Remaining Bare Steel Tanks by Category (January, 2000)

■ Retail

■ Commercial

■ Comm.-resid.

■ Industrial

■ Residential

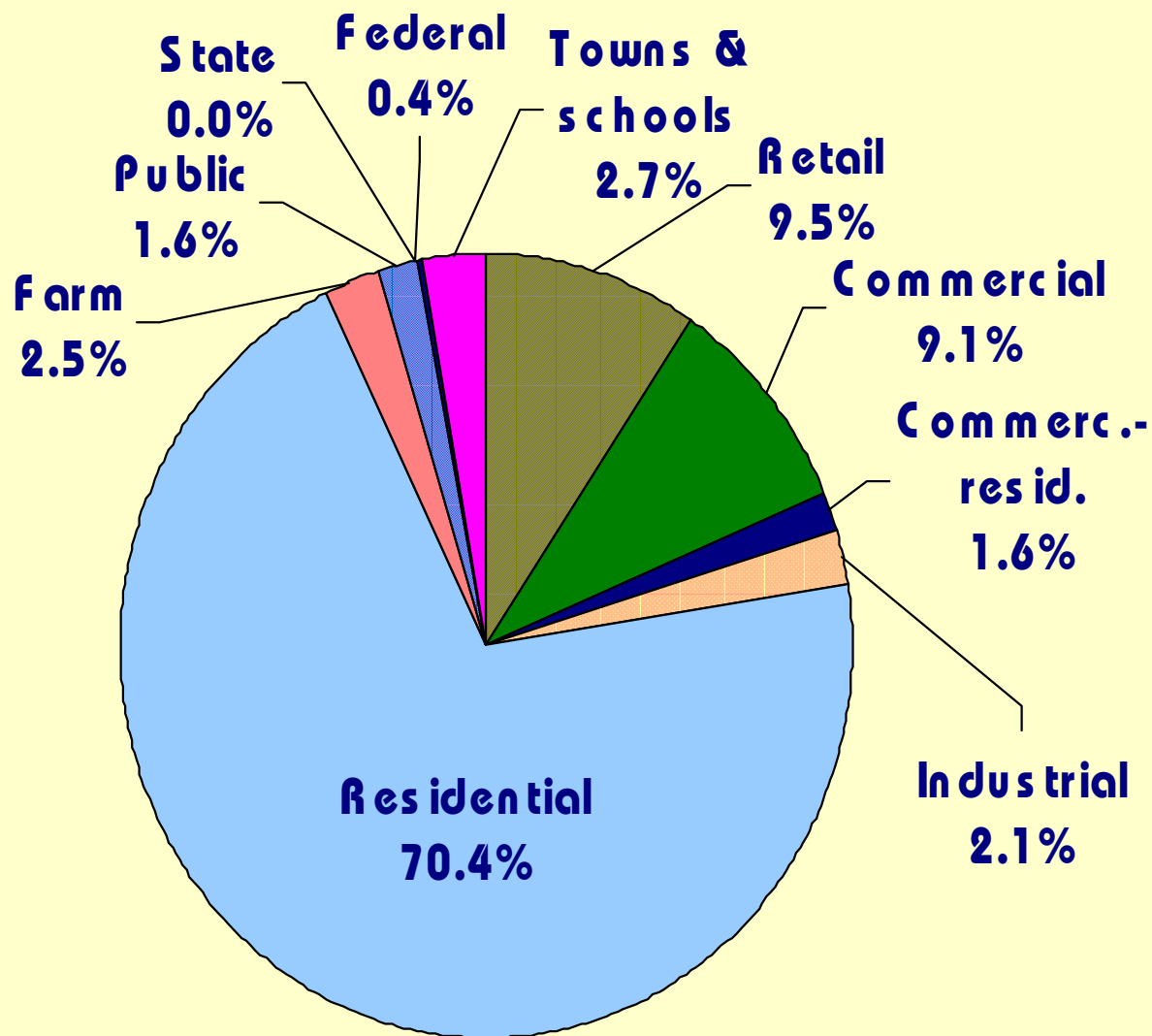
■ Farm

■ Public

■ State

■ Federal

■ Towns &
schools



F. Anticipated Expenses.

1. Backlog of Priority List Sites

All remedial work at oil storage sites is prioritized by Department staff based on the potential effect to public health and groundwater resources. Contamination posing the greatest threat to drinking water or the public health is cleaned up to "stringent" standards. Stringent sites require remediation of soil and groundwater to concentrations protective of human health in the event of exposure to contaminated media. Sites posing a more moderate threat are cleaned up to "intermediate" standards. Intermediate standards are established to abate ongoing sources of groundwater contamination and to minimize the risk of petroleum vapor in buildings and utility conduits. All other sites are cleaned up to "baseline" standards. Baseline sites include sites where groundwater has already been contaminated beyond use. Baseline sites are cleaned of oil saturated soil and free petroleum products. This helps insure the resources of the Fund are first spent on the sites posing the greatest risk.

The Department continues to employ several measures to control remedial costs. A cost eligibility guide clarifies eligible and ineligible costs. Standardized formats for work plans and invoicing are used to promote efficient work plan approval and cost effective clean ups.

The Department has calculated the average clean up cost at underground storage tank sites closed between 1994 and 1999 to be approximately \$42,000, which compares favorably to a national average of approximately \$77,000 per site..

The Department has calculated the average clean up cost at aboveground storage tank sites closed between 1994 and 1999 to be approximately \$9,300.

Currently, the Department has approximately 389 sites on the list of projects requiring long-term remediation. Of these, remedial work is substantially underway at about 60 sites and these can be closed with little additional effort and cost. The remaining 329 sites comprise a backlog whose remediation and closure is estimated to take another two to five years. The estimate assumes much of the remedial work would be performed by contractors from the Department's prequalified "FastTrack" list.

The budget for completion of the 389 sites is estimated at \$13.2 million. Nearly half of this amount is concentrated in three community water systems which would replace private wells in densely populated settings. The budget is based on staff estimates of expenditures required to complete remedial work at these sites.

Estimated budget for 389 sites = **\$13,200,000.**

2. Future Remediation - Underground Storage Facilities

A. Registered Underground Storage Facilities:

A review of site assessments submitted to the Department over a four month period (June - October 96) after the removal of tanks storing motor fuels indicates that approximately 66% of underground storage facility sites (many sites have multiple tanks) had suffered a discharge. However, only about half of the sites require clean-up to "stringent" or "intermediate" standards. This leak rate is used to estimate the cost to complete the needed remedial work at the remaining sites where non-conforming tanks have not been removed.

There are approximately 577 registered underground tanks in the state which must be properly abandoned. Each owner has received numerous notices of violation and technical assistance information regarding the removal of these facilities. The owners have also been informed that the statute prohibits the granting of Fund coverage because the deadline for proper abandonment has passed. However, the Department believes the majority of the owners are financially unable to comply and will be unable to pay for any clean up actions required. It is anticipated that the Fund may be required to pay "first dollar" if these tanks are to be removed and contamination addressed. These expenditures will be subject to review for possible reimbursement actions. Assuming 66% of these have suffered a discharge and half of those sites will require the average clean-up expenditure, the estimated fund liability is approximately \$7,980,000.

$577 \text{ locations} \times 66\% = 381 \text{ future sites} \div 2 = 190 \text{ sites requiring remediation}$

$190 \text{ sites} \times \$42,000 \text{ (ave. cost)} = \$7,980,000.$

B. Unregistered Underground Storage Facilities:

Each year the Department is notified of the discovery of unregistered bare steel underground oil storage facilities which require proper abandonment. The average number of unregistered tanks discovered based on a six year review (1994 – 1999) is 281 tanks each year.

In calendar year 1999, 155 unregistered tanks were discovered which required proper abandonment. The Department expects the number of unregistered tanks discovered to continue to decline. Assuming an average of 100 additional tanks are discovered each year through December 31, 2005, the clean up costs required are calculated below. To insure a timely and effective clean up, the Department is assuming it will

be necessary to pay for clean ups from the fund. Some portion of these expenditures are likely to be recovered.

$100 \text{ locations} \times 66\% = 66 \text{ future sites} \div 2 = 33 \text{ sites requiring remediation}$

$33 \text{ sites} \times 6.5 \text{ years} = 214.5 \text{ sites}$

$214.5 \text{ sites} \times \$42,000 = \$9,009,000$

All non-conforming underground storage facilities = **\$16,989,000**

Conforming Underground Storage Facilities:

In addition, during calendar year 1999, the Department investigated and initiated remedial action at two sites involving releases of petroleum from “state of the art” facilities. Remedial costs at each site are currently approaching \$1,000,000. The threat of releases from “conforming facilities” represents a “wild card” when attempting to project future expenditures.

Based upon our experience this year, and concerns about the adequacy of cathodic protection measures at certain tanks, the Department believes a contingency of \$1 million per year for conforming tanks is appropriate.

$\$1,000,000 \times 6.5 \text{ years} = \mathbf{\$6,500,000}$

3. Future Remediation - Aboveground Storage Facilities

There is no registration requirement for aboveground oil storage facilities, making remediation costs difficult to project.

Approximately 676 aboveground tank sites (July 1990 - December 31, 1999) have been the subject of remedial work covered by the Ground Water Oil Clean up Fund. Expenditures for clean up costs at aboveground storage sites are increasing. In FY 98, these expenses totaled over \$1,400,000. In FY 1999, clean up expenses at above ground tank sites totaled \$1,896,261. Based on the Department’s experience in FY 99 we estimate the Fund liability through December 31, 2005 as follows:

$\$1,896,261 \text{ (FY 99)} \times 6.5 \text{ years} = \mathbf{\$12,325,696.}$

This estimate may be low given AST’s comprise an increasing component of the Department’s remediation program

4. Future Remediation – Mystery/Transportation Releases

Each year the Department responds to numerous incidents of petroleum discharges which cannot be attributed to underground or aboveground oil storage facilities. Many of these incidents are related to transportation accidents. Others involve discharges which have come from undetermined sources. In situations where the Department can not prove the source of the discharge, there is no Fund coverage or reimbursement of clean up expenditures. These projects represent an ongoing liability for the fund. The Department estimates that of the 66 new sites added to the long term remediation projects list on average over the last three years, 41% are mystery/transportation releases. The average cost to clean up these types of releases based on clean ups completed from 1995 through 1999 is approximately \$21,300.

Hence, the liability to the fund is projected as follows:

$66 \text{ new sites/year} \div 41\% \text{ mystery/transportation} = 27 \text{ sites}$

$27 \text{ sites/year} \times 6.5 \text{ years} = 175.5 \text{ sites}$

$175.5 \text{ sites} \times \$21,300 \text{ average cost} = \mathbf{\$3,738,150}$

5. Third Party Damage Claims

Third party damage claims have been received at a rate of approximately 22 new claims per calendar year over the last 10 years. The calculations below represent the anticipated costs to cover cash settlements to third party damage claims until December 31, 2005, even though Maine statute calls for this service to continue after 2005.

$22 \text{ claims/year} \times 6 \text{ years} = 132 \text{ new claims}$

$132 \text{ new claims} + 63 \text{ existing claims (December 31, 1999)} \times \$18,445 \text{ (ave. cost)} = \mathbf{\$3,596,775.}$

6. Tank Replacement Pilot Program

The legislature will evaluate a proposal during this legislative session to increase expenditures from the Ground Water Oil Clean up Fund from \$1,500,000 annually to \$2,500,000 annually. This will facilitate the replacement of substandard facilities and prevent future discharges. If this proposal is enacted there will be an increase in annual expenditures of \$1,000,000 annually from July 1, 2000 through December 31, 2005.

Revenue required to fully fund this program is estimated as follows:

FY 2000	
July 1, 1999 – June 30, 2000	\$ 1,500,000
FY 2001 – FY 2005	
July 1, 2000 – June 30, 2005 (x5)	\$12,500,000
FY 2006	
July 1, 2005 – December 31, 2005 (x.5)	\$ 1,500,000
	\$15,500,000

7. Payments to Maine Coastal and Inland Surface Oil Clean Up Fund

Prior to June 30, 1995, a total of \$1,798,217.32 was paid out by the Maine Coastal and Inland Surface Oil Clean Up Fund for clean ups at above ground tank sites. When the use of the Fund was expanded to cover clean up costs at aboveground tank sites, prior expenditures from the Coastal and Inland Fund had to be repaid. Legislation enacted in 1995 prohibited the borrowing of funds by and between the Maine Coastal and Inland Surface Oil Clean Up Fund and the Ground Water Oil Clean Up Fund after June 30, 1995. This legislation also directed all funds borrowed before that date be repaid with interest, in as prompt a manner as revenues allow and in no event more than 2 years after the date the funds were transferred. Through June 30, 1996 the entire amount "borrowed" has been repaid. Interest charges in the amount of \$134,160.84 were transferred to the Maine Coastal and Inland Surface Oil Clean Up Fund during October 1996. Hence, this debt has been fully reimbursed and no future liability is projected.

8. Transfers to FAME

Transfers from the Ground Water Oil Clean Up Fund to FAME for the revolving loan program in the amount of \$13 million were completed in the beginning of FY 98. The total amount authorized by Maine law for this purpose is \$13 million. No future transfers are authorized by statute.

9. Reimbursements to Petroleum Dealers

The statute provides that any person who prior to October 9, 1991, paid a fee and who continues to pay fees at the time the product is imported and subsequently exports the product may petition the State to reimburse the fees paid.

During FY 99, refunds from the Ground Water Oil Clean up Fund in the amount of \$1,736,825 were made. This represents a decrease of \$1,608,972 compared to the amount reimbursed during FY 98.

The net income referred to in Table 1 of this report is the total income minus the fee refunds. Because the net income is used to project future revenue, it is not necessary to project fee refunds as expenditures through December 31, 2005.

10. Projected Annual Expenditures - Minus Clean Up Expenses -Estimated

Capital (FY 99)	\$ 23,492
Indirect Cost Obligation (Estimated)	\$ 610,061
Other Transfers (FY 99 minus FAME Transfers)	\$ 211,236
All Other (Estimated)(FY 99 minus State Cap)	\$ 2,125,640
Total	\$ 2,970,429

\$2,970,429 x 6.5 = \$19,307,789

* Personnel Services (July 1, 1999 – Dec. 31, 2005) \$16,168,079

Total Projection - (July 1, 1999 - Dec. 31, 2005)

\$19,307,389 + \$16,168,079 = **\$35,475,868**

(FY 99) Assumes expenses to be consistent with FY 99.

NOTE: Other Transfers includes transfers to Fund Insurance Review Board, Attorney General, Board of Environmental Protection, Finance Authority of Maine, Fire Marshal, etc..

- * Personal Services is projected using the actual FY 99 expenditure (\$2,139,693) plus an annual adjustment factor of 4%. The adjustment factor is codified in statute and is derived from past trends covering increases under the state labor contract, merit pay increases and increases in state health care, retirement and workers compensation costs.

G. Fund Adequacy.

Total Estimated Expenses - Jan. 2000 – Dec. 31, 2005

1. Backlog of Priority List Sites – Estimated (389 sites)	\$13,200,000
2. Future Remediation - UST – Estimated (non-conforming)	\$16,989,000
- UST – Contingency (conforming)	\$ 6,500,000
3. Future Remediation - AST – Estimated	\$12,325,696
4. Future Remediation – Mystery/Transportation Releases	\$ 3,738,150
5. Third Party Damage Claims - Estimated	\$ 3,596,775
6. Tank Replacement Pilot Project	\$15,500,000
7. Payments of Maine Coastal and Inland Surface Oil Clean Up Fund	\$ 0
8. Transfer to FAME	\$ 0
9. Indirected Cost on Items 1 - 5	\$ 8,232,680
Projected Cleanup Expenses	\$80,082,301
Other projected Expenses (from page II-12)	\$35,475,868
Estimated to December 31, 2005	
TOTAL	\$115,558,169

Total Estimated Revenue - Jan. 1, 1998 - Dec. 31, 2005

The net income received during FY 99 (July 1, 1998 – June 30, 1999) was used to project revenue through December 31, 2005. Net income is equal to annual revenue minus the amount of fee refunds to petroleum distributors for oil not stored in Maine. During FY 99 the Maine State Housing Authority (MSHA) returned \$1,895,642 to the Ground Water Oil Clean up Fund. This represented unused funds from the tank replacement loan program. Also, in FY 99 the Fund Insurance Review Board returned \$503,000 in unused administrative funds. In FY 99 \$46,000 was paid to the Ground Water Fund from the Maine Environmental Protection Fund. These monies represented expenses journaled to the wrong account. These three one time sources of revenue were also subtracted from FY 99 income prior to projecting income through December 31, 2005. Because the use of the Fund as a clean up insurance program is scheduled to end on December 31, 2005, revenue was estimated for the first six months of FY 2006 (July 1, - December 31, 2005). Title 38 M.R.S.A. Section 569-A.6 provides that after the aggregate sum of \$13,000,000 has been transferred to FAME for the revolving loan program, the per barrel fee assessed must be reduced by 6¢ per barrel. Because the final transfer to FAME was made in October, 1997, the reduction in fees was effective November 1, 1997. Income was projected using the reduced fee schedule.

1. Existing Fund Availability - July 1, 1999 \$4,095,434

2. Estimated Available Income -July 1, '99 - December 31, '05

FY 98 revenue minus fee refunds and one time sources of revenue \$12,178,283

\$12,178,283 x 6.5 years = \$79,158,839

Note: Assumes future revenue to be consistent with FY 99. The estimate does not account for fluctuating fee assessments pursuant to Rules administered by the Fund Insurance Review Board.

H. Conclusions.

The lack of data regarding the number, location, capacity and construction of above ground storage facilities makes it difficult to accurately project future Fund expenditures for clean up at above ground tanks sites. Response Services staff continue to respond to at least one new spill each day from these facilities, and the number of AST sites requiring long-term remediation has increased over the last several years.

While the number of non-conforming USTs known to the Department is less than 600, UST – related remediation expenses are still substantial for three reasons. First, there is a backlog of sites awaiting remediation. Second, about 1/3 of the registered non-conforming tanks and a significant number of newly discovered tanks can be reasonably anticipated to require remedial activity. Third, the Department conducted several expensive remediations at conforming tanks during 1999, thereby indicating such UST failures should be anticipated albeit less frequently than before the current regulations were in place.

The Department is processing 63 third party damage claims compared to 87 claims cited in the 1998 annual report. The amount of awards to third party damage claimants damaged by discharges of oil appears to be consistent with the previous year.

Fees on oil imported into Maine were reduced on November 1, 1997 as provided by law because an aggregate of 13 million dollars had been transferred to FAME. Transfers to the Inland and Coastal Surface Oil Clean Up Fund and FAME have been completed in accordance with the statute. No additional transfers are projected in this report.

It is possible that some monies may be returned to the fund from FAME as loans issued through the revolving loan program are repaid, thereby increasing Fund revenues.

Fees on oil imported into Maine which were reduced on May 1, 1998, because the Fund balance exceeded 5 million dollars for three consecutive months have remained in place throughout the reporting period. However, it is likely the increased fee will be re-instated if the expenditures projected in this analysis are realized.

The gasoline additive MTBE could have a major impact on fund expenditures. The solubility of MTBE allows the additive to spread quickly via ground water flow when gasoline is released to

the environment. Due to the solubility characteristic, there have been several incidents involving releases of small amounts of gasoline that resulted in remedial work and third party damage claim payments. The increase in workload resulting from contamination by MTBE is the subject of much debate as illustrated by the wide range of potential impacts contained in the Maine MTBE Drinking Water Study-Preliminary Report of October 13, 1998. The full impact of MTBE on the Fund is difficult to project. To date, the projections contained in the report of increased contamination of water supplies by MTBE have not yet materialized. MTBE remains an unpredictable element of predicting Fund adequacy.

Other factors such as the increased availability of natural gas may result in a decrease in the amount of oil imported and a reduction in revenue.

Due to the high incidence of leaks from aboveground oil storage systems, the legislature adopted a proposal allowing expenditures of up to \$1 million annually for two years for the removal and replacement of those systems posing a threat to drinking water supplies. The Legislature will consider a proposal to increase the allotment for this program by \$1,000,000 annually and extend the program through December 31, 2005. If this proposal is approved the total expenditure will be \$15,500,000 through December 31, 2005. However, replacing these systems before they begin leaking should result in decreased clean up expenditures.

Total revenue and expenses as projected in this analysis through December 31, 2005 indicates a shortfall of as much as \$36,399,330 could be anticipated. Accordingly, the Department must continue to prioritize cleanups and control costs to ensure the Fund remains solvent, even while the Department works to reduce the backlog of sites requiring long-term remediation. The ability of the FIRB to increase and decrease oil importation fees will likely be utilized to maintain sufficient funding for clean ups.

The Department recognizes the projected deficit is a significant departure from last year's evaluation. This report is a more thorough evaluation of the financial picture, taking into account all the various remediation activities and preventative programs that the Department anticipates through December 31, 2005.

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